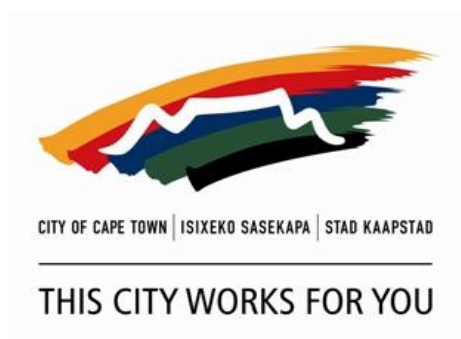


DIRECTORATE : STRATEGY & PLANNING

DEPARTMENT OF PLANNING & BUILDING DEVELOPMENT MANAGEMENT

NOTIFICATION POLICY FOR LAND USE DEVELOPMENT APPLICATIONS

**A COMPONENT OF THE
POLICY-DRIVEN LAND USE MANAGEMENT SYSTEM**



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1 INTRODUCTION

The Bill of Rights in the Constitution stipulates that everybody has the right to administrative action that is lawful, reasonable and procedurally fair. The Promotion of Administrative Justice Act (PAJA) sets out the requirements for fair and reasonable administrative action and the regulations promulgated in terms of PAJA determines the provisions for notifying a person/s which might be affected by such an action. Property owners and members of the public should therefore be notified of development proposals and provided with the opportunity to input into decisions where such development proposal materially and adversely affected their rights. To ensure legal compliance this policy should also ensure that any person that may have an interest in a development proposal should be notified and provided with the opportunity to comment or object to the proposal. The City Council's vision for Cape Town includes public participation (advertising) as one of the priorities, in that it supports:

- the building of a partnership with all its people;
- the creation of a democratic city that is accountable to its people;
- focus on the citizen as customer and to be responsive to their needs;
- effective administration by cutting "red tape"; and
- working with the people of Cape Town;

The City of Cape Town has therefore formulated this policy to provide for uniform, appropriate and adequate advertising guidelines for land use and development applications, and as such, to facilitate public participation and notification procedures in the development process. In terms of applicable law these procedures are the powers of the City Manager. The City Manager has with the approval of Council delegated such powers to the Director: Planning & Building Development Management who has subsequently sub-delegated such powers to officials. The Policy intends to:

- provide guidelines for the minimum level of advertising. It should be noted that some applications because of the nature and potential wider impact might require more than the minimum required advertising as is provided for in this policy;
- assist property owners and users of land in the advertising of their land use and development applications;
- inform those interested and affected parties who may be adversely affected by development and give them an opportunity to comment/object/appeal on development proposals, and
- provide guidelines to delegated officials in exercising their discretion and in so doing ensure that uniform and consistent decisions are made relating to the advertising and notification of development applications.

The policy replaces the Advertising Policy dated 7 March 2002 that will have to be formally repealed by the PEPCO. The revised policy will be forwarded to the City Manager for approval.

The policy implementation date will be from the date it is approved by the City Manager as an operational policy and will be applicable until revised due to legislative, administrative or operational reasons or repealed by an authorised decision making structure.

The primary purpose for advertising is to notify members of the general public, landowners, tenants and organisations who may have an interest in the application and/or whose rights may be affected by it. The type of application and the legal requirements of the relevant Ordinance or Acts determine the advertising procedure. Although most applications are made and assessed in terms of the legislation prescribed here, other related legislation, policies and frameworks not discussed in this document may also influence the public participation process and requirements. It should also be noted that in terms of the provisions of the Constitution and the Municipal Systems Act it is the duty of the City to encourage involvement and build the capacity of the community it serves to enable it to participate in its affairs and to foster community participation.

The Constitution:

“152 Objects of local government

(1) The objects of local government are-

- (e) to encourage the involvement of communities and community organisations in the matters of local government.”*

Municipal Systems Act:

“16(1) A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose-

- (a) encourage, and create conditions for, the local community to participate in the affairs of the municipality.....*
- (b) contribute to building the capacity of-*
 - (i) the local community to enable it to participate in the affairs of the municipality; and*
 - (ii) councillors and staff to foster community participation; and.....”*

2.1 Land Use Planning Ordinance No. 15 of 1985 (LUPO)

2.2.1 The responsibility for deciding if anyone is adversely affected by or may have an interest in an application rests, in respect of applications submitted in terms of LUPO, with the Town Clerk (or City Manager).

2.2.2 In respect of section 2(i) of LUPO,

“advertise” means to serve a notice on every owner of land, who in the opinion of the director or a town clerk or secretary has an interest in the matter and whose address he knows or can obtain and, if the director or the said town clerk or secretary, as the case may be, so decides, to publish a notice in the Official Gazette and in the press a notice-

- (a) Specifying the place where and the hours during which particulars of the matter will be available for inspection, and*
- (b) Stating that objections may be lodged with a person specified in the notice before a date likewise specified, being not less than 21 days after the date on which the notice is so served or is so published,*

And “advertisement” has a corresponding meaning.”

2.2.3 In cases where Council has been provided with the competency to amend or withdraw a structure plan (the Section 4(10) of LUPO Structure Plans) and the Provincial Minister has determined the procedures in this regard as provided for in terms of section 4(7), such amendment or withdrawal be advertised to interested and affected parties as determined by the City Manager.

- 2.2.4 In terms of section 15(2)(a) of LUPO, departure applications shall be advertised if, in the opinion of the City Manager, any person may be adversely affected. In addition to this Section 15(2)(b) any objection received against the application must be submitted to the applicant for comments. Section 15 (2)(c) requires that the relevant comment of any person who, in the opinion of the City Manager, has an interest in the application, be obtained. This discretionary power also applies to subdivision applications as specified in section 24(2)(a), amendments or cancellations in section 30(2), and waiver, imposing and amending conditions in section 42 (4).
- 2.2.5 Rezoning applications must be advertised (notice served) by the City Manager in terms of section 17(2) (a) of LUPO. Rezoning applications may be required to be advertised in the press as well as the Provincial Gazette at the discretion of the City Manager. The relevant comment of a person who has an interest in the application shall also be obtained - section 17(2) (c). When multiple applications for one development are received, the applications must be advertised simultaneously.
- 2.2.6 Regulations promulgated in terms of LUPO stipulate that after agreement has been reached with an applicant the application is complete and advertising must be commenced with within one month after the date of such completed application. The regulations further require that where an application in terms of LUPO also requires authorisation in terms of other legislation and advertising in terms of such legislation is also required, that advertising should be done simultaneously.

2.2 Removal of Restrictions Act No. 84 of 1967

Applications by the Administrator (now the relevant Provincial Minister): In terms of section 2(4) (a) and (b) of the Removal of Restrictions Act 84 of 1967, the application must be advertised once in the Provincial Gazette and twice in the press in two languages, after which there is a mandatory period of a minimum of 21 days for comment. If, in the opinion of the relevant Provincial Minister (or delegated official), an individual will be adversely affected by the removal of a title deed restriction, then notice must be served on such individuals. This process is undertaken by the local authority on behalf of the relevant Provincial Minister. Council therefore has no discretionary powers in this regard and advertising of a removal of restriction may only commence after the Council has been informed by PGWC of the extent of advertising. It should be noted that PGWC issue from time to time circulars to inform municipalities on the procedures in terms of this Act. Applications by a land owner or person: In terms of section 3(6) of the Removal of Restrictions Act 84 of 1967 the application must be advertised which is similar to the process as set out above.

2.3 Promotion of Administrative Justice Act No. 3 of 2000 (PAJA)

- 2.3.1 In terms of the provisions of sections 3 and 4 of PAJA all administrative actions affecting a person or the public must be procedurally fair.
- 2.3.2 If an application will materially and adversely affect the rights or legitimate expectations of any person it must be procedurally fair.

PAJA section 3: *“Procedurally fair administrative action affecting any person*

- (3) *In order to give effect to the right to procedurally fair administrative action, an administrator may, in his or her or its discretion, also give a person referred to in subsection (1) an opportunity to-*

- (a) *obtain assistance and, in serious or complex cases, legal representation;*
- (b) *present and dispute information and arguments; and*
- (c) *appear in person.”*

2.3.3 If an application affects the public, Council may require a public inquiry or follow notice and comment procedure or both as contemplated in section 4(1) of PAJA. The procedures as stipulated in the regulations for fair administrative procedures will then have to apply when calling and conducting a public inquiry and public hearing or where an administrative action will materially or adversely affect the rights of the public.

PAJA section 4. *“Administrative action affecting public.—*

- (1) *In cases where an administrative action materially and adversely affects the rights of the public, an administrator, in order to give effect to the right to procedurally fair administrative action, must decide whether—*
 - (a) *to hold a public inquiry in terms of subsection (2);*
 - (b) *to follow a notice and comment procedure in terms of subsection (3);*
 - (c) *to follow the procedures in both subsections (2) and (3);*
 - (d) *where the administrator is empowered by any empowering provision to follow a procedure which is fair but different, to follow that procedure; or*
 - (e) *to follow another appropriate procedure which gives effect to section 3.”*

2.4 This policy does not apply to applications lodged in terms of the National Building Regulations and Standards Act.

3 ADVERTISING PROCESS

Land use and development applications must go through an advertising process to notify a person who may be adversely affected by a proposal. The extent to which an application is advertised should depend on the type of application, the complexity of the application and the potential impact of the proposed development. The minimum extent for such advertising will be set by this policy.

Advertising or the notice and comment procedure has a preparation phase and actual advertising phase. It is considered important that a well structured and complete application be submitted for advertising as this will ensure better and quicker outcomes of the process for all parties concerned. The following prescribed process will therefore apply:

3.1 Informal pre-application consultation

3.1.1 Before formally submitting an application to Council, it is recommended that the applicant first discuss the details of the proposed development with the designated planning official in the relevant Land Use Management Office in which the property is situated.

3.1.2 The purpose of this pre-application consultation is to enable the Council to inform the applicant of the anticipated extent of advertising, and to make sure that the applicant knows what the process entails and

what information and documentation is required for proper advertising. At this stage, the parties may also agree to whether the advertising can be conducted by the applicant or whether Council will conduct the advertising.

- 3.1.3 The consultation can be done by meeting, phoning or corresponding with the office to discuss the application.

3.2 Advertising by applicant

- 3.2.1 When the applicant conducts the advertising, this may only be done after Council has drafted or vetted the notices and such notices are in accordance with Council's standard letters and requirements. The starting and closing date for comments and objections must be in accordance with this policy and the "dead period" as set out in 6.1.2. A separate notice of the application(s) must in all cases be served on each of the affected owners in accordance with Council's prescribed standard notification letter, giving detailed notice of the relevant applications applied for as well as the time period allowed for submitting comments/objections, the address where such objections must be lodged, the place where it can be inspected and include relevant plans and further information, where applicable. Notified owners must sign for receipt of such notice and note the date of receipt thereof in cases where the applicant can serve a notice on such owners. In cases where the applicant has to forward notices by registered mail, necessary proof must be submitted. Once such notice has been served on the relevant owner(s), the applicant (or his/her representative) may discuss the application with the notified owner(s) and if the owner agrees to it, he/she can sign Council's prescribed standard form and the relevant plan(s), consenting to the application and agreeing to waive any further right to object.
- 3.2.2 Council shall provide the applicant with a complete list of names and addresses of interested and affected parties to be served notice on where Council is legally obligated to cause such application to be advertised. In any other case Council may require the applicant to obtain names and addresses.
- 3.2.3 Whenever the applicant advertises, proof of compliance must be submitted to Council within 5 working days from the date of commencement of the advertising or the extended date which might be granted by the District Manager. It must be made clear to the applicant that in the event that Council is not satisfied with the advertising conducted by the applicant, Council may require that the application be re-advertised either by Council or by the applicant. All expenses as a result of any re-advertising will be for the account of the applicant.
- 3.2.4 Applicants, except in cases where the signing of the "no objection letters" by neighbours are required, must be accredited by the Department: Planning and Building Development Management before they will be allowed to advertise. To be accredited applicants must submit sufficient proof that they or the staff in their respective offices have acquired the appropriate skills and expertise through prior experience to conduct such advertising. If the District Manager / Section Head: Land Use Management / Section Head: Customer Interface is satisfied, he/she may issue a written letter in accordance with Annexure A accrediting such applicant to undertake advertising. Accreditation will only be valid for the application applied for and the District Manager / Section Head: Land Use Management / Section Head: Customer Interface may in writing withdraw such accreditation at any time. If an applicant was previously accredited and the District Manager / Section Head: Land Use Management / Section Head: Customer Interface is still satisfied that the applicant should remain accredited for a further application, he/she may extend such accreditation to such a further application. It will only be required that a signed note from the District Manager / Section Head: Land Use Management / Section Head: Customer Interface is placed on the relevant case file in this regard and no formal application for accreditation will therefore be required.

3.2.5 Applicants must be informed that the option in 3.2.1 is optional and not compulsory. It remains Council's legal responsibility to cause the application to be advertised and therefore has to ensure that applications are properly and lawfully advertised.

3.3 Advertising by Council

3.3.1 Council may elect to undertake the advertising process (or part thereof); or allow the applicant to undertake the advertising if such an applicant is accredited as provided for in 3.2.4. As a general rule, Council will undertake advertising of the more complex applications where notification in the press and Provincial Gazette is required and where the applicant has no track record of having successfully conducted advertising of development applications on this level.

3.3.2 The cost of advertising is borne by the applicant and no notification or advertising may proceed before full payment is made.

3.4 Availability of information on submitted applications

3.4.1 All files and plans regarding formally submitted applications are open to the public for inspection during the advertising process at the relevant Land Use Management Office. In certain cases (i.e. large scale developments with regional impact) and where the public has been notified of it, copies of development applications must be made available in libraries or other community facilities which are the nearest to the applicable property.

3.4.2 The period required for comments and objections and all the dates thereof must be displayed on the relevant files and must be captured on the relevant administrative system.

3.5 Submission of comments / objections

3.5.1 Any person has the right to submit comments or object to the proposal. These comments and objections must clearly substantiate and give reasons why the person is adversely affected. All objections must be submitted to the Council in writing on or before the closing date.

3.5.2 Any person who cannot read or write may come to the relevant Land Use Management Office within the specified time period and a member of staff will transcribe his or her comment or objection.

3.5.3 Interested and affected parties must be given at least 30 days to comment or object to a proposal and the time period must be clearly indicated on the letter of notification. A person may apply in writing for an extension of time to submit comments subject to the provisions in 6.6. The final closing date for comments and objections must be given on all documentation.

3.5.4 After the closing date, all comments and/or objections are sent to the applicant, who has the right to respond to these. The applicant may amend the application accordingly or motivate why the objections are not relevant or applicable. The response from the applicant must reach the Council within the time specified in the notice. If no response has been received within this period, the Council may assume that the applicant has no response to the comments and/or objections received and proceed with processing the application. In cases where an application is substantially amended, which leads to a more adverse impact, the delegated official must advertise a new application after determining the extent of advertising of the new application in terms of the guidelines of this policy.

3.6 Assessment, approval / refusal and MSA right of appeal

- 3.6.1 Comments and/or objections and the applicant's response to these are incorporated into a departmental report which is submitted for a decision to the relevant Council decision-making structure.
- 3.6.2 Planning officials may have delegated authority to decide on applications, subject to those restrictions as might be set out in the approved system of delegations.
- 3.6.3 After a decision has been taken by the Council or its delegatee, the applicant and objectors (if any) must be notified of the decision. Only the applicant and **not** third parties such as objectors may be notified of their right of appeal in terms of the Municipal Systems Act, and the time period to submit an appeal. An appeal may be lodged by the applicant on the decision or conditions of approval in terms of the Municipal Systems Act and such an appeal will be considered by Council's Planning and General Appeals Committee or the City Manager depending on whether a political structure or an official took such decision. It should be noted that only the appeal authority may determine whether an appeal is valid or not, i.e. if an appeal has been submitted within the legal timeframe.
- 3.6.4 The first appeal (in terms of the Municipal Systems Act) is an "internal appeal". Such appeal may be lodged against the decision itself or any of the conditions imposed when taking such decision. A decision taken by an official under delegated powers can be appealed to the City Manager. A decision by a political structure under delegated powers can be appealed to the Planning and General Appeals Committee. Appeals and the reason for the appeal must be submitted to the relevant office as specified in the notice within the specified period. Such office will ensure that a report be submitted to the relevant appeal authority. Once the Municipal Systems Act appeal has been resolved, it becomes the final decision of Council.
- 3.6.5 In cases where Council makes a decision or applications are submitted in terms of the still applicable regulations of the repealed Black Communities Development Act 1984 (Act 4 of 1984), or where Council does not have the authority (in terms of the Removal of Restrictions Act, the General Structure Plan in terms of section 4(6) of the Land Use Planning Ordinance or any other legislation, Council recommends a decision to the Provincial Administration (or any other sphere of government) who then makes the final decision, no right of appeal will exist in terms of the Municipal Systems Act.

3.7 Right of appeal in terms of the Land Use Planning Ordinance (LUPO)

- 3.7.1 Both the applicant and objectors have the right to appeal in terms of the LUPO against Council's decision (or against any conditions imposed), where such decision was taken in terms of the Land Use Planning Ordinance or any zoning scheme regulations brought out in terms of section 7 or 8 of the Land Use Planning Ordinance. It is therefore legally required that both the applicant/land owner and the objectors (if applicable) should be notified of the decision to enable them to appeal in terms of LUPO.
- 3.7.2 This second appeal (in terms of the Land Use Planning Ordinance) is an "external appeal" against the decision of Council to the Provincial Administration: Western Cape. The Land Use Planning Ordinance governs the type of applications and decisions which can be appealed. An appeal in terms of the Land Use Planning Ordinance must be lodged within 21 days from date as specified in the notice. All relevant parties as set out in the provincial notice, Circular 1/2007 dated 2 February 2007, must be notified and provided with a copy of an appeal submitted in terms of LUPO.

3.8 Final approval or refusal

An appeal to the Provincial Administration (or any other sphere of government) is then formally approved or refused by such authority and the various parties are informed accordingly. Council will then record the decision and update all the administrative systems accordingly.

4. EXTENT OF ADVERTISING

TABLE 1 MINIMUM LEVEL OF INFORMING INTERESTED AND AFFECTED PARTIES

Table 1 indicates the minimum level of informing parties for each type of application that requires advertising and should be read in conjunction with the remainder of the document. Wider advertising may be required by the delegated official if the complexity and impact of the development application warrants it. Advertising in the press must be considered when development proposals will have a wider impact than the local neighbourhood or when it is required in law. Information regarding the advertising of applications not listed in Table 1 should be dealt with on advice from the Head: Land Use Management. Final advertising instructions should therefore only be issued by the delegated official after assessing the full impact of each particular application and any person that might be an interest in the matter or might be adversely affected by the development proposal.

TABLE 1		MINIMUM LEVEL OF INFORMING PARTIES				
TYPE OF APPLICATION	Letter to affected property owners	Advertise in Press	Letter to Ward Councillor	Letter to Community organisation	Notes	
1. PERMANENT DEPARTURES INCLUDING NON-LAND USE CONSENTS ITO REGULATIONS						
1.1 Coverage						
All Coverage departures	✓		WC/PR	Comorg	1	
1.2 Floor area factor (bulk) or habitable rooms						
All floor area factor (bulk) or habitable rooms departures	✓		✓	✓	1	
1.3 Building lines/Setbacks						
All building line / setback departures	✓		WC/PR	Comorg	2	
1.4 Height						
1.4.1 maximum height of buildings	✓		✓	✓		
1.4.2 maximum number of storeys	✓		✓	Comorg		
1.4.3 height of supporting structures	✓		✓	✓		
1.4.4 height of boundary walls	✓		WC/PR	Comorg		
1.5 Parking						
1.5.1 All parking departures	✓		✓	✓	2	
1.5.2 access/carrageway crossings	✓		WC/PR	Comorg	2	
1.6 Special Areas						
All Special Areas	✓		✓	✓	2	
1.7 General						
1.7.1 second dwelling /double dwellings	✓		WC/PR	Comorg	2	
1.7.2 schedule conditions	✓		✓	✓	3	

TYPE OF APPLICATION	Letter to affected property Owners	Advertise in Press	Letter to Ward Councillor	Letter to Community organisation	Notes
1.7.3 departure from minimum erf size/frontage	✓		✓	✓	2
1.7.4 minimum street width for certain buildings	✓		✓	✓	2
1.7.5 other permanent departures not mentioned	✓		WC/PR	Comorg	2
2. AMENDMENTS					
2.1 amendment of subdivisions, amendment of special consent/ secondary/conditional use, temporary departures conditions, amendment to Site development Plans and amendment of rezoning conditions where applications were originally advertised to parties and conditions were not proposed by internal departments	✓	✓ (depending on nature of the amendment)	✓	✓	
2.2. amendment of any other LUPO condition	✓		WC/PR	Comorg	4
3. REMOVAL OF RESTRICTIONS					
All Removal of Restriction applications					10
4. SUBDIVISIONS					
4.1 subdivision of land- consistent with policy	✓		WC/PR	Comorg	6 & 7
4.2 subdivision of land- inconsistent with policy	✓	✓	✓	✓	6 & 7
4.3 other subdivisions	✓		WC/PR	Comorg	6 & 7
5. CONSENT FOR SECONDARY USAGE/SPECIAL CONSENT/CONDITIONAL USE					
5.1 when no impact assessment is required (5.3, 5.4 and 5.5 excluded)	✓		✓	✓	5
5.2 when an impact assessment is required	✓	✓	✓	✓	
5.3 working from home	✓		✓	✓	
5.4 demolitions & new work in Urban Conservation area			✓	✓	9
5.5 second dwelling & double dwelling units	✓		WC/PR	Comorg	
5.6 development in Public Open Space	✓	✓	✓	✓	
6. TEMPORARY LAND USE DEPARTURE					
6.1 All Temporary Departures	✓		✓	✓	5
7. REZONING					
7.1 All rezoning applications	✓	✓	✓	✓	
8. AMENDMENT OF ZONING SCHEMES					
8.1 All Amendments of Zoning Schemes (excluding schedule conditions)			WC/PR	Comorg	8 & 10
9. EXTENSION OF TIME					
9.1 where policy has changed			✓	Comorg	12

TYPE OF APPLICATION	Letter to affected property Owners	Advertise in Press	Letter to Ward Councillor	Letter to Community organisation	Notes
9.2 where policy has not changed but the reasons for supporting the development have changed due to service availability or new facts limiting the development of the property.			✓	Comorg	12
10. AMENDMENT OR WITHDRAWAL OF A STRUCTURE PLAN					
10.1 where Council is empowered to amend or withdraw a structure plan	✓	✓	✓	✓	10
11. STREET NAMING					
11.1 where new streets are to be named which are not in compliance with Council's policy		✓	✓	✓	11

- ✓ Minimum required advertising
- WC/PR** Only when the ward councillor (WC) or proportional representational (PR) councillor has indicated in writing to the District Manager that he/she should be notified. Where it is a minimum requirement that a WC councillor be notified a PR councillor may also indicate that he/she should be notified. PR councillors should only be notified where the development proposal may have a wider impact than the surrounding properties. Note that WC/PR councillors should not sign the "no objection" letter.
- Comorg** Only when a community organisation has indicated in writing to the District Manager that it should be notified and such development proposal may have a wider impact than the surrounding properties.
- Notes**
- If a ward councillor has changed during the application process, comments from the new councillor must be obtained (only if such a change has occurred during the advertising period).
 - In cases of multiple applications the level of advertising will be determined by the application with the highest required level of advertising.

NOTES RELATING TO THE ASSESSMENT OF APPROPRIATE ADVERTISING

Table 1 must be read in conjunction with the following notes, which provide further guidelines to delegated officials on how to apply their discretion to determine who might be adversely affected or have an interest in the matter:

1	Coverage, bulk and habitable room departures exceeding the requirement of the relevant Scheme or allowed rights by less than 10% generally do not require any form of advertising.
2	In the case of departures from a Zoning Scheme only the abutting property owners, which include diagonally adjoining properties and properties directly opposite the street of the subject property, are consulted. Where contraventions impact on the amenities of legally protected scenic views or a waiver of a building line is required or any other departure exceeding more than 50% of the restriction, advertising is extended to the community organisation and the ward councillor.
3	Schedule conditions were imposed when certain approvals were given by the Council. Contraventions of these are treated in the same manner as Zoning Schemes amendments. Before the required advertising is determined, the history of the property/condition must be investigated and, depending on the nature of such amendment, a lesser advertising procedure can be determined by the District Manager.
4	No external advertising is required for an application for any amendment unless the proposed amendment

	will adversely affect someone, in which case the application is advertised to the adversely affected property owners and ward councillor.
5	In certain cases, when consent for secondary usage/special consent/conditional use or a temporary departure is applied for, but where no impact assessments are required, no press advertising may be required.
6	No advertising for subdivisions are required when a rezoning to subdivisional area has already been advertised and such subdivision is in line with the proposals as was advertised during the rezoning process.
7	Subdivisions which are exempt in terms of section 23 of LUPO are not required to be advertised. Furthermore, no advertising is required in instances where a subdivision will have no impact on the existing physical environment (e.g. subdivision of existing row houses which will physically not alter due to the subdivision).
8	Where practically possible, notices may be served on affected property owners by way of notices distributed with municipal accounts, letter drops or other means. Registered letters only need to be served when practical or financially viable.
9	With this type of application, appropriate urban conservation interest groups and/or sometimes the Institute of Architects and/or competent heritage/advisory committee may be consulted.
10	Advertising for the removal of title deed restrictions, amendment of structure plans and amendment of zoning schemes must be in accordance with the instruction from the Provincial Government: Western Cape. Ward councillor also to be notified if he/she indicated in writing to the District Manager that he/she should be notified.
11	The naming of newly created streets (private or public) must only be advertised if it is not in compliance with Council's approved policy for the Naming and Numbering of Streets. In such an event it will have to be advertised as indicated in the table. In all cases a proposal for the naming of streets must be cleared by the planning department's GIS section. The above does not include the re-naming of streets.
12	Notices to be served on all objectors to the original application.

5 METHODS OF ADVERTISING

The method of advertising must comply with the requirements prescribed in this section.

5.1 Letters to interested and affected parties

5.1.1 Categories of interested and affected parties

Letters to interested and affected parties may be sent or delivered to:

- a) Abutting property owners, which include diagonally adjoining properties and properties directly opposite the street of the subject property, who may be adversely affected by a proposal or have an interest in the matter, informing them of an application and of their right to comment on, object to or support the application;
- b) The local ward councillor for the area;
- c) The residents and ratepayers in an area via their representative local ratepayer's association, geographically based civic organisations or other interested community based organisations (generally referred to as community organisations) as registered with Council or Sub-Council;
- d) Legislation requires that letters in certain circumstances be sent or delivered to public institutions and/or government departments to inform them of applications and to obtain their comments in respect of the applications (see section 6.4); and
- e) Whenever an application is made for a proposal within or would affect a sectional title development registered notifications must be served on the Body Corporate as well as those members (as per the address list of ownership held by the body corporate or the address list now kept by Council) which in the opinion of the delegated officials may be adversely affected by the proposal or have an interest in the matter. In addition and after considering the potential impact of the application the delegated official may also require that registered notices be served on all members of the Body Corporate (as per the address list of ownership held by the body corporate or the address list now kept by Council). In the event that no address list is kept the delegated official may request the applicant to do a "notification letter drop" to occupiers of affected units. The applicant must then provide the delegated official with a list signed by all the members/occupiers confirming that they have received such notification.
- f) Whenever an application is made in a development for which a Home Owner's Association (HOA) was established i.t.o. Section 29 of LUPO, the same level of informing parties shall apply as stipulated in Table 1, provided that the HOA shall also be notified. In the event that a HOA is not functioning, all the members of the HOA must be notified. The delegated official may on request agree that the applicant do a "notification letter drop" to each member of the HOA or occupier of affected units. The applicant must then provide the delegated official with a signed list by all the members confirming that they have received the notification.
- g) Whenever objections and/or comments during advertising are received by Council in the form of a petition, such petition must include at least the following information for that petition to be considered a valid objection and/ or comment: i) each page of a signed petition must indicate the full text of the objection and/or comments and reasons; ii) the full name and address of each signatory; and, iii) the full name, postal address and telephone number and/or facsimile number of the person (usually the creator of the petition) to whom further communication must be directed; provided that where such information is not made available, the Council shall direct further communication only to the first person who signed such petition and whose address is known. The creator of the petition will have to take the responsibility for notifying the persons on the petition.

5.1.2 Requirements

- (a) With minor applications (e.g. permanent departures such as building lines, second dwellings, etc. and where no press advertising was required), Council's prescribed standard letter ("no objection letter") to the interested and affected parties can be hand delivered. Notified owners must sign for receipt of such letter and note the date of receipt thereof. Once such notice has been served on the relevant owner(s), the applicant (or his/her representative) may discuss the application with the notified owner(s) and if the owner agrees to it, he/she can sign the "no objection" letter and the relevant plan(s), indicating that they understand the implications of this letter and consenting to the application and agreeing to waive any further right to comment/objection, which are, together with proof of service of the formal letters of notification, then submitted to the Council. If a property owners or adversely affected party cannot be contacted notification must be forwarded by registered mail.
- (b) Letters inviting objections must include the following information:
- i) specify the place where and the hours during which more information on the application is available;
 - ii) mention that objections may be submitted, indicating the address to which such objections must be sent and the closing date for submission of such objections;
 - iii) provide more detail on the property to which the application is applicable by giving the erf/farm number; street address and suburb of the property;
 - iv) provide more details of the application (e.g. rezoning from residential to commercial in order to permit a gift shop) with a concise motivation for the development; and
 - v) mention that the full application is available for scrutiny at the relevant Land Use Management Office, if applicable.
- (c) Withdrawal of objections must be unconditional and in writing and signed by the objector or all the objectors, specifically in the case of a petition.

Note: The above procedures must be done in conjunction with the delegated official.

5.2 Advertisement in the press

Advertising in the press includes the placement of an advertisement in local and/or regional newspapers* and a notice in the Provincial Gazette.

5.2.1 Requirements

- Advertising in the press is undertaken by Council or in certain cases by the applicant (only with permission from Council). When advertising in the press is required, a notice must also be published in the Provincial Gazette.
- Advertisements in the press:
 - a) must be in at least two of the three (Afrikaans, English, Xhosa) provincial languages in two of the regional newspapers* distributed in the city and in the City` advertising section of such newspaper, in the language of the newspaper;

- b) if advertising in the press is undertaken by the applicant, then it must prior to publication be submitted, in draft form, to the delegated official for scrutiny and approval and after advertising (before the closing date for comments/objections) the applicant must submit the full page(s) to Council as proof of compliance.

** Regional newspapers (i.e. Die Burger and the Cape Times) and additionally in community newspapers, if required and considered to be appropriate by the delegated official.*

5.2.2 Proof of Compliance:

A full page on which the advertisement appears must be submitted to Council as proof that it was published in the press.

6 GENERAL REQUIREMENTS

6.1 Time permitted for commenting/objecting

6.1.1 The time permitted for comments/objections will be specified in the advertisement and/or notice. Interested and affected parties must be given at least 30 days, while public institutions must be given at least 60 days to comment or object.

6.1.2 Advertising of development applications as in 5.1.2.(a) will not be allowed during the peak summer holiday period from 24 December to 2 January (including both the 24th and the 2st), which will be called “dead period”. No notices of decisions will be forwarded to applicants and objectors within this “dead period”.

For all other development applications as well as those that require advertisements in the press and provincial gazette the “**dead period**” will be **15 December until 15 January** of the following year which should coincide with that of the Provincial Administration: Western Cape.

In circumstances where advertising of an application has already commenced and the 30 day period ends within the above “dead periods” (excluding Removal of Restriction applications), the normal 30 day time period to comment/object shall be extended by the number of days that the advertising period has fallen within the “dead period”.

6.1.3 When calculating the time permitted to submit comments/objections the first day will be excluded and the last day included, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.

6.2 Cost of advertising

The cost of all advertising is borne by the applicant in terms of the Council approved tariffs.

6.3 Circulation to internal branches & departments

6.3.1 Applications must where agreed with Council’s internal service departments and branches also be circulated to such departments and branches for technical comments. In cases where the relevant Land Use Management Office circulates applications to other service departments for comment, such office co-

ordinates the circulation and assesses the application after the comments have been considered. Internal departments must be requested to comment within 30 days from the date of the memorandum to comment or if required a maximum of 60 days.

6.3.2 In the case of complex applications where environmental-, transport and traffic- or heritage assessments might be required, the applicant is encouraged to hold early consultations with the relevant departments, in co-ordination with the Land Use Management Office. It must be noted that service departments may have requirements in terms of legislation other than LUPO.

6.4 Consultation with public institutions

6.4.1 Legislation prescribes that certain public institutions must be consulted. This may include, inter alia, the following:

- Provincial Chief Directorate of Transport - where the property abuts or may impact upon a proclaimed road.
- National Department of Transport - access from a national road or if the property is located within 60 m from a national road.
- South African Heritage Resources Agency (SAHRA) and Heritage Western Cape- a heritage impact assessment may be required in terms of the National Heritage Resources Act, 1999 (Act 25 of 1999).
- Department of Mineral and Energy Affairs - the relevant mining permits in terms of the Mineral Act 1991(Act 50 of 1991) have to be obtained, if necessary.
- Department of Water Affairs and Forestry - certain types of water usage or pollution control have to be licensed in terms of the National Water Act, 1998 (Act 36 of 1998).
- Department of Environmental & Development Planning - with regard to the Atmospheric Pollution Prevention Act 45/65 and Environmental Conservation Act 73/89 / National Environmental Management Act, No. 107 of 1998.
- In some cases, authorities like the Cape Town Partnership, Department of Education, Eskom, Telkom, SA Rail Commuter Corporation and other divisions of the former South African Transport Services, Cape Institute of Architects, an Architectural Advisory Committee in an area or the South African Police Services must also be consulted.

6.4.2 Public institutions may have requirements in terms of legislation other than LUPO and should therefore be consulted.

6.5 On-site display of notices

The Director: Planning & Building Development Management may approve a list of development applications that will require a notice to be displayed on site. The method of display, content, size, medium or material to be used for the display and time period the display should be on site must be determined by the land use management office. This must be in the form of a written undertaking between Council and the applicant in accordance with Annexure B and be kept on file for record purposes. The applicant will be responsible to display the notice as per the undertaking and provide the land use management office with photo proof, with the date displayed on the photo, which photo must be taken on the commencement date of the advertising period. The photo must be kept on file for record purposes. All costs for the display of notices will have to be borne by the applicant. Notwithstanding the above and the requirement that it will be expected from the applicant to endeavour to keep the display in good condition during the advertising period, the fact remains that the display might be damaged or removed

due to reasons beyond the control of the applicant. In such an event it will not constitute grounds for non-compliance with the policy or with LUPO.

6.6 Extension of time to submit comments

In terms of section 37 of LUPO comments or other information required (excluding comments on objections) must be submitted within a period of 60 days of the date it was required. The definition for “advertise” in LUPO further stipulates that in cases where an opportunity was granted to submit objections, that a period of not less than 21 days be provided. No provision is however provided in LUPO to extend this period. Regulations promulgated in terms of PAJA stipulate that a notice to comment/object to an administrative action should allow for a period not shorter than 30 days. This provision has been accepted as a general rule in terms of this policy and the same approach has been adopted for LUPO applications. PAJA further makes provision for an extension of this closing date in cases of more complex applications. Applications for the extension of time to submit comments may therefore be accepted and processes for more complex applications as may be determined by the delegated official. Such applications must be however be submitted within the prescribed time period in which to submit comments and the decision served on the owner/applicant not later than 7 days after the original closing date. In cases where such applications are supported it may not be for a period longer than 60 days after the original date of advertising.

6.7 Time period between advertising and decision making

In some cases development applications are delayed for an unacceptably long period after advertising was completed i.t.o. LUPO and where no decision is made. It should be that sections 15(2)(a), 17(2)(a) and 24(2)(a) of LUPO do not require a further advertisement of the development proposal and therefore LUPO contemplates only one advertisement. Rezoning, subdivision and departure decisions do however constitute administrative action and the Council is therefore obliged to follow a fair process as stipulated in PAJA. To be fair towards all interested and affected parties as well as the fact that property ownership might have changed in the area surrounding the development proposal, a reasonable time period should be determined after which it will be required that the development proposal be re-advertised in terms of the provisions of Sections 3(1) and 4(1)(d) and (e) of PAJA. A period of **30 months** after the original advertisement should provide a developer with sufficient time to resolve outstanding development issues and for a decision to be made. In the event that the developer cannot resolve outstanding issues and/or the application file was not closed in the mean time and/or a report was not submitted to the relevant decision making structure within the above period, it must be required that the development be re-advertised in terms of the provisions of PAJA. Only the decision maker may decide to re-advertise which will require that all cases where applications were re-advertised must be reported to the decision maker for endorsement.

6.8 Advertising of a “scaled down” development proposal

The City in general supports and encourages negotiations between objectors and an applicant to find an amicable solution to reasonable objections to mitigate the impact of a development proposal. An advantage of such an approach is that it can potentially remove objections against an application resulting in a decision that could be made under delegated powers (if the proposal is not in conflict with a policy or other conditions restricting such delegated powers) thereby removing the possibility of a lengthy appeal process. In cases where an application was advertised and during this process and after consultation with the objectors or commenting parties who have responded to the advertising (this include an internal service department or external government department) the applicant submits a scaled down (“scaled

down” in this context means reducing the total impact of the development proposal and excludes the amendment of the proposal by for example moving, relocating or re-organising parts of a building/s and/or land uses) development proposal for the specific purpose to mitigate the impact on the surrounding properties and built environment, the delegated official may decide after careful consideration of the impacts of the scaled down development proposal that further advertising is not required. If the delegated official is of the opinion that the scaled down development proposal may impact on the rights of other parties or it has triggered a further application, then the development proposal or the further application or both, may have to be re-advertised in terms of the provisions of PAJA and the guidelines of this policy. In the event that the applicant can not obtain the written withdrawal of the objections against the original as well as the scaled down development proposal and wants to proceed with the scaled down development proposal, all standing objections will remain valid and the application will have to be processed in accordance with the directions of Council’s approved System of Delegations. Note that the scaled down development proposal must be submitted by the applicant to the relevant district office together with a covering letter clearly stating that the original application has been replaced by the scaled down development proposal. No application fees will be payable except if the scaled down development proposal triggers a further application for which a fee must be charged. Normal advertising fees will be payable in the event that it is required to re-advertise the amended application. It should be further noted that an applicant may elect not to pursue this option and may request or inform the district office to continue processing the original application.

6.9 Delegation of authority

All decisions made in terms of this Policy must be in accordance with Council’s approved System of Delegations and Sub-delegations issued in terms of such system.

6.10 Deviations from these policy guidelines

Deviations from these policy guidelines may only be made where reasonable and after it has been properly motivated. A decision on any deviation from these policy guidelines may only be made by the Director or Regional- or District Managers. A copy of the approved deviation must be forwarded to the Head: Land Use Management for information.

7 DEFINITIONS

“**Applicant**” means any person who makes or intends making an application.

“**Advertising**” has the same meaning as stipulated in the Land Use Planning Ordinance, No. 15 of 1985.

“**impact assessment**” has the meaning as stipulated in terms of the applicable legislation or policy which requires such impact assessment.

“**interested and affected parties or person**” means any owner of land or person who in the opinion of the delegated official has an interest in the matter and whose address is known or can be obtained.

“**notice**” means the serving of a letter on an interested and affected party or person.

“**Council**” refers to the City of Cape Town or its successor(s) in title, and may include, subject to the intention of the clause, any official, executive councillor, portfolio, SPELUM or executive committee, or the

full Council; in accordance with the approved system of delegation.

“**Ordinance**” is the Land Use Planning Ordinance, No. 15 of 1985.

“**Policy**” refers to the City of Cape Town’s Advertising and Notification Policy (A component of the public participation process for land use & development applications), to prescribe advertising / notification requirements and procedure for land use and development applications administered by the Council.

All other terms used in this Policy has the same meaning as prescribed in the relevant legislation.

8 LAND USE MANAGEMENT OFFICE CONTACT DETAILS

Land use and development applications must be directed to the Land Use Management Office of the relevant District in which the property is situated.

DISTRICT PLANNING OFFICE	OFFICE LOCATION	POSTAL	TELEPHONE	FACSIMILE
TABLE BAY	Media City Hertzog Blvd Cape Town	PO Box 4529 Cape Town 8000	021 400 6444	021 421 1963
BLAAUWBERG	Milpark Building Cnr Koeberg Rd & Ixia Rd, Milnerton	PO Box 35 Milnerton 7435	021 550 1090	021 550 7517
NORTHERN	Municipal offices 87 Brighton Road Kraaifontein	PO Box 25 Kraaifontein 7569	021 980 6183	021 980 6179
TYGERBERG	Civic Centre Cnr Voortrekker Rd & Tallent Str Parow	PO Box 11 Parow 7499	021 938 8459	021 938 8509
HELDERBERG	Municipal offices Cnr Andries Pretorius and Victoria Street Somerset West	PO Box 19 Somerset West 7129	021 850 4346	021 850 4354
KHAYELITSHA / MITCHELL'S PLAIN	Stocks & Stocks Bldg Ntlakohlaza Street Khayalitsha	Private Bag X4 Parow 7499	021 360 1101	021 360 1113
CAPE FLATS	Ledger House Cnr Aden Aneue & George Str Athlone	PO Box 283 Athlone 7764	021 684 4300	021 684 4440
SOUTHERN	3 Victoria Road Plumstead	Private Bag X5 Plumstead 7801	021 710 8203	021 710 8039



Civic Centre
12 Hertzog Boulevard
Cape Town 8001
P O Box 4529
Cape Town 8000

Ask for: [Name Surname]

Tel no: 021 [phone no & ext]

Fax no: 021 [fax no & ext]

E-mail: Name.Surname@capetown.gov.za

Website: <http://www.capetown.gov.za>

Ref: [file ref no]

Application no: [Tracker no]

Iziko loLuntu
12 Hertzog Boulevard
Cape Town 8001
P O Box 4529
Cape Town 8000

Cela: [Name Surname]

Umnxeba: 021 [phone no & ext]

iFeksi: 021 [fax no & ext]

E-mail: Name.Surname@capetown.gov.za

Website: <http://www.capetown.gov.za>

iRef: [file ref no]

Inomb yesicelo: [Tracker no]

Burgersentrum
Hertzog-boulevard 12
Kaapstad 8001
Posbus 4529
Kaapstad 8000

Vra vir: [Naam Van]

Tel no: 021 [tel no & uitbr]

Faks no: 021 [faks no & uitbr]

Verw: [leër verw]

Aansoek nr: [Tracker nr]

STRATEGY & PLANNING

Department : Planning & Building Development Management

[Date]

[Applicant's name & Postal address]

Dear Sir / Madam

ACCREDITATION TO ADVERTISE LAND USE DEVELOPMENT APPLICATIONS : PROPOSED [APPLICATION TYPE] : ERF XXX, XXXXXXXX, XXXXXXXXX

Your application with reference [xxxx] submitted on [xxxxxxxxxxxxx] (date of receipt), refers.

I wish to advise that your application to be accredited to undertake the advertising of the abovementioned land use development application has been approved. This approval only applies to the application referred to in this letter. Should you wish in future to undertake advertising, you are required to apply for further accreditation.

You are required to inform Council within 14 days of the date of this letter of your intention to proceed with the advertising of your application, as well as an undertaking that you will comply with the requirements as set out in the approved Notification Policy for Land Use Development Applications. Please note that Council may at any time withdraw this accreditation should there be reasonable proof that you did not advertise in accordance with the instructions from Council and the provisions of the mentioned policy. In such an event, Council will have to re-advertise and all costs in this regard will be for your account.

[In case On-site display of notices is required – please delete if not applicable]

You are also required to advertise the land use development application by means of display of the notice on the property concerned. In this regard you will have to submit a written undertaking before commencement of such advertising. The format for and content of such undertaking can be obtained from this office.

Yours faithfully

[Name Surname]

for **DIRECTOR : PLANNING & BUILDING DEVELOPMENT MANAGEMENT**

cc [The owner, P O Box xxx, xxxxxxxxxxx, xxxx]

**[Letterhead of Property owner / Authorised person
on behalf of property owner]**

**[Postal address of Property owner / Authorised person]
[Date]**

[Address of District Planning office]

Dear Sir / Madam

**ON-SITE DISPLAY OF ADVERTISING NOTICE FOR LAND USE DEVELOPMENT
APPLICATION : [Applicant to complete application detail]**

We, [Property owner / Authorised person], undertake to display the advertising notice for the abovementioned land use development application on [Erf / Erven (applicant to complete)] in accordance with the under mentioned stipulations, as well as the provisions as set out in the City's approved Notification Policy for Land Use Development Applications.

Stipulations of the Undertaking are as follows:

1. The method of on-site display has been agreed with the City of Cape Town and will be as follows: [Applicant to complete]
2. The content of the on-site display has been agreed with the City of Cape Town and will be as follows: [Applicant to complete]
3. The size and dimensions of the on-site display has been agreed with the City of Cape Town and will be as follows: [Applicant to complete]
4. The material to be used for the on-site display has been agreed with the City of Cape Town and will be as follows: [Applicant to complete]
5. The notice will be displayed on-site from [date] until [date] and these dates must coincide with that of the advertising period of the land use development application.
6. Photographic proof with the date displayed on the photo taken on the commencement date as stipulated in 5 above, will be submitted to the District Planning office within 7 (seven) days after such photo has been taken.
7. All costs for the construction / placing and removal of such notice or any cost incidental thereto or as a result of the re-advertising of the application by Council (if required) will be borne by the property owner.
8. The property owner / authorised person will endeavour to keep the on-site notice in good condition for the full duration of the advertising period.
9. The property owner exempts Council from any liability attributable directly or indirectly as a result of the construction / placing on-site or removal of the notice or any

damage that may be incidental or may result from this requirement to undertake such on-site display.

10. Where required, the property owner will obtain the necessary building plan approval in terms of the National Building Regulations and Standards Act.

Signed by

Property owner

Name

Date

Duly authorised person (if applicable)

Name

Date

Concurred with

District Planning office

Official name

Date

for Director : Planning & Building Development Management